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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/711,404

09/16/2004

Alexander Schweizer

LUKP:119US

5403

24041 7590 12/09/2009  
SIMPSON & SIMPSON, PLLC  
5555 MAIN STREET  
WILLIAMSVILLE, NY 14221-5406

EXAMINER

TRAN, DALENA

ART UNIT

PAPER NUMBER

3664

MAIL DATE

DELIVERY MODE

12/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/711,404	<b>Applicant(s)</b> SCHWEIZER ET AL.	
	<b>Examiner</b> Dalena Tran	<b>Art Unit</b> 3664	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) 6-20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 and 5 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,21 and 22 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10711404	9/16/04	SCHWEIZER ET AL.	LUKP:119US

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WILLIAMSVILLE, NY 14221-5406

**EXAMINER**

Dalena Tran

ART UNIT	PAPER
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3664	20091205
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DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

**DETAILED ACTION**

**Notice to Applicant(s)**

1. This office action is responsive to the amendment filed on 8/12/09. As per request, claim 23 has been amended. Claims 1-5, and 21-23 are pending.

The allowance of claims 1-2, 4, and 21-22 in the last office action is withdrawn, because the reference still reads the claims.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 4, and 21-22, are rejected under 35 U.S.C. 102(b) as being anticipated by Yamaguchi (5216938).

As per claim 1, Yamaguchi discloses a method for controlling a motor vehicle drivetrain system, which motor vehicle drivetrain system has a drivetrain and a combustion engine for the purpose of driving drivetrain and which motor vehicle drivetrain system has an electronic engine control unit that controls the combustion engine and an electronic transmission control unit for the purpose of controlling at least one of torque transmission device or gearbox device where the electronic engine control unit has a signal output connected to the transmission control unit, the signal output for transmitting signals to the transmission control unit, and a signal transmission link connected to the transmission control unit, the link for receiving signals from the transmission control unit (see columns 2-3, lines 51-61), comprising: determining, using the

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electronic engine control unit and the signals received or transmitted by the electronic engine control unit, whether there is a functional impairment in the actuation device (see the abstract, line 15; and column 3, lines 33-35), and limiting, using the electronic engine control unit, maximum permissible engine torque of the combustion engine when the electronic engine control unit has determined a functional impairment in the actuation device (see the abstract; and columns 4-6, lines 51-49).

As per claim 2, Yamaguchi discloses a method for controlling a motor vehicle drivetrain system, which motor vehicle drivetrain system has a gearbox device arranged in a drivetrain or at least one torque transmission device arranged in drivetrain where the motor vehicle drivetrain system has a combustion engine for the purpose of driving the drivetrain as well as an electronic engine control unit that controls the combustion engine and an electronic transmission control unit for the purpose of controlling the gearbox device or the at least one torque transmission device (see columns 2-3, lines 51-61), comprising: determining whether the actuation device is functionally impaired (see the abstract, line 15; and column 3, lines 33-35); and limiting maximum permissible engine torque of the combustion engine when it is determined that the actuation device is functionally impaired (see the abstract; and columns 4-6, lines 51-49).

As per claim 4, Yamaguchi discloses determining by means of the electronic engine control unit whether there is a data or signal communication or a functioning data or signal communication between the electronic transmission control unit and the electronic engine control unit or whether the electronic transmission control unit is functionally impaired or whether the gearbox device or the torque transmission device are functionally impaired or limiting the maximum permissible engine torque by means of the electronic engine control unit

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or turning off the combustion engine by means of the electronic engine control unit (see columns 12-13, lines 54-47; and columns 16-17, lines 6-52).

As per claims 21-22, Yamaguchi discloses a safety system for a motor vehicle, where the safety system can receive, transmit and process electronic signals and has a memory device in which there is stored at least one control program that controls a method according to claim 1, and the safety system comprises an electronic engine control unit and the electronic engine control unit can receive, transmit and process electronic signals and has the memory device in which there is stored at least the control program that controls said method (see columns 7-8, lines 21-41; and columns 10-11, lines 44-18).

4. Claim 23, is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 3, and 5 are allowable.

#### Remarks

6. Applicant's amendment filed on 8/12/09 has been fully considered.

In reviewing Yamaguchi reference, Yamaguchi discloses determining, using the electronic engine control unit and the signals received or transmitted by the electronic engine control unit, whether there is a functional impairment in the **actuation device** (see the abstract, line 15; and column 3, lines 33-35), and limiting, using the electronic engine control unit, maximum permissible engine torque of the combustion engine when the electronic engine control unit has determined a functional impairment in the **actuation device** (see the abstract;

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and columns 4-6, lines 51-49). Therefore, the allowance of claims 1-2, 4, and 21-22 in the last office action is withdrawn, the updated search as above.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dalena Tran whose telephone number is 571-272-6968. The examiner can normally be reached on M-W (in a first week of a bi-week), and T-R (in a second week of bi-week) from 7:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoi H. Tran can be reached on 571-272-6919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dalena Tran/  
Primary Examiner, Art Unit 3664

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